

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2578

Cir. Ct. No. 2012FA685

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

BENJAMIN PAUL MEEUWSEN,

PETITIONER-RESPONDENT,

V.

DARCI LYNN MEEUWSEN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
JOHN ZAKOWSKI, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Darci Meeuwsen, pro se, appeals an order amending a judgment dissolving her marriage to Benjamin Meeuwsen. To the extent Darci raises arguments challenging the original divorce judgment, we lack

jurisdiction to review those matters. With respect to the post-judgment issues preserved for this appeal, we reject Darci's arguments and affirm the order. For the reasons outlined below, we also deny Benjamin's motion for costs and attorney fees associated with this appeal.

BACKGROUND

¶2 Darci and Benjamin were married in July 1995. In 1999, the parties moved from the west coast to Green Bay, where Benjamin began working for his father's company, now known as Fourinox. The couple have three children and, after the move to Green Bay, Benjamin focused on building the family business while Darci stayed at home to care for the children. Darci holds a master's degree in psychology and was working toward her PhD when she left the workforce.

¶3 Benjamin filed for divorce in June 2012, and the matter proceeded to trial. On February 26, 2015, the circuit court entered a nonfinal "Decision and Order" that addressed issues including maintenance, property division and equalization payments, and directed Benjamin's attorney to draft the final judgment. The circuit court awarded \$90,000 in yearly maintenance to Darci, for a period of five years. With respect to property division, the court equally divided Fourinox's stipulated value of \$2.64 million and ordered Benjamin to begin equalization payments to Darci after completion of the five-year maintenance period. The court further detailed that once the equalization payments commenced, full payment was due within fifteen years, with a minimum of \$53,000 to be paid each year and interest on the unpaid balance of 3% per year. The circuit court also determined that interest would not begin to accrue until the first equalization payment was due.

¶4 On March 13, 2015, before entry of the final judgment, Darci moved for reconsideration. The final divorce judgment was entered on March 17. Benjamin timely filed a notice of entry of judgment, thus shortening the appeal time to forty-five days from the date the judgment was entered, making the notice of appeal due by May 1, 2015. *See* WIS. STAT. § 808.04(1).¹

¶5 Darci filed a notice of appeal from the divorce judgment on August 19, 2015. By order dated October 12, 2015, we dismissed that appeal, No. 2015AP1715, concluding we lacked jurisdiction to review the divorce judgment due to the untimely filing of the notice of appeal. *See* WIS. STAT. RULE 809.10(1)(e) (“The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.”). In that order, we determined that the time for filing a notice of appeal had not been altered by the filing of Darci’s reconsideration motion.

¶6 Under WIS. STAT. § 805.17(3), the filing of a reconsideration motion “not later than 20 days after entry of judgment” alters the appeal deadlines for appellate review of the judgment. Under this rule, the timely filing of a reconsideration motion delays commencement of the appeal period until the reconsideration motion is decided or ninety days after the entry of the judgment, whichever is later. The motion for reconsideration is deemed denied ninety days after the judgment, and the time to appeal commences. Here, § 805.17(3) did not operate to extend Darci’s appeal time because the statute applies only to motions

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

filed “after entry” of the judgment. A motion filed before the judgment is entered is, in effect, denied by the decision to enter the judgment.

¶7 Moreover, even assuming WIS. STAT. § 805.17(3) applied, the notice of appeal was late. The reconsideration motion was deemed denied ninety days after entry of the judgment, and the forty-five day appeal time ran from that date, giving Darci 135 days from entry of the divorce judgment to file her notice of appeal. The notice of appeal was filed after the July 30, 2015 deadline.

¶8 At an October 2015 hearing, the circuit court, on its own motion under WIS. STAT. § 806.07, revisited three issues arising from the divorce judgment to rectify “mistakes in the original decision.” Specifically, the circuit court amended the interest rate on the equalization payment from 3% to 5%; provided a mechanism to secure the equalization payment; and ordered Benjamin to provide Darci with financial information, including quarterly financial statements. These amendments to the divorce judgment were memorialized in a November 20, 2015 Decision and Order that also addressed four previously filed contempt motions.

¶9 In December 2015, Darci filed a motion for “additional appeal,” a notice of appeal, and a request that her appeal rights be restored or reinitiated. By order dated December 11, 2015, we recounted that appeal No. 2015AP1715 had been dismissed. We added that “[t]o the extent the circuit court’s November 20, 2015 order/revised judgment raises issues that could not have been appealed from the initial divorce judgment, that order/revised judgment may be appealed.” We noted, however, that the notice of appeal must be filed with the clerk of the circuit court. This appeal from the November 20, 2015 Decision and Order follows.

DISCUSSION

¶10 On appeal, Darci raises several challenges to the divorce judgment, claiming the circuit court erred by: (1) setting only a five-year term of maintenance; (2) ordering no interest on the equalization payment for the first five years; (3) ordering an equalization payment with “vague” terms; and (4) creating an “unfair support package.” As noted above, we lack jurisdiction to review any of these issues arising from the original divorce judgment, as Darci failed to timely appeal.² We are limited to reviewing only those matters arising from the post-judgment order on appeal.³

¶11 Darci contends the circuit court failed to adequately secure the equalization payment in the event Benjamin is ultimately unable to pay. The circuit court, however, acknowledged its failure to address a mechanism to secure the equalization payment. The court recounted that it had “heard arguments concerning a judicial lien compared with assignment of insurance death benefits as to appropriate security for the equalization payment.” In the order on appeal, the circuit court expressly amended the divorce judgment to specify that the equalization payment is a debt which will be owed Darci; to include standard “debt provision” language providing that if either party failed to satisfy a marital debt obligation, the other party may petition the court for an award of maintenance

² In her reply brief, Darci suggests this court could extend the time for filing her notice of appeal from the original divorce judgment. Even had such an extension motion been filed, it would have been denied, as the time for filing a notice of appeal in a civil matter cannot be enlarged. *See* WIS. STAT. RULE 809.82(2)(b).

³ Benjamin moves this court to strike Darci’s brief, emphasizing the brief’s lack of both record cites and citation to legal authority. We deny the motion. Because we decline to address the merits of any issues arising from the original divorce judgment, these inadequacies of the brief did not hamper our review.

in the amount of said debt; and to emphasize that maintenance obligations cannot be discharged in bankruptcy. Darci fails to establish the circuit court erred by opting to secure the equalization payment by imposing a non-dischargeable maintenance obligation if Benjamin fails to pay.

¶12 Darci also contends the circuit court erred by failing to find Benjamin in contempt. Two of Darci's contempt motions alleged Benjamin's failure to comply with a pre-judgment temporary order and two alleged his failure to comply with the divorce judgment itself.⁴ Contempt of court is intentional disobedience to the authority, process or order of a court. WIS. STAT. § 785.01(1)(b). A person may be held in contempt for failure to pay where that failure is willful and contemptuous and not the result of an inability to pay. *Van Offeren v. Van Offeren*, 173 Wis. 2d 482, 498, 496 N.W.2d 660 (Ct. App. 1992). We review a circuit court's use of its contempt power to determine whether the court properly exercised its discretion. *Benn v. Benn*, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999).

¶13 Here, the temporary order imposed financial obligations on Benjamin while the divorce action was pending. With respect to the first contempt motion, the circuit court ordered Benjamin to pay Darci \$1,498.29 as

⁴ We are not persuaded by Benjamin's argument that those contempt motions arising from the temporary order were "implicitly denied" by the divorce judgment if they were not addressed by the circuit court. To the extent Darci alleged during the divorce trial that Benjamin failed to make ordered payments, any rulings made by the circuit court at that time are not properly before this court. "An appeal from a final judgment or final order brings before this court all prior non-final judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon." WIS. STAT. RULE 809.10(4). Further, to the extent Darci appears to raise issues post-dating the November 20, 2015 order on appeal, those matters are likewise not before this court. Therefore, we are addressing only those matters addressed by the circuit court in the order on appeal.

reimbursement for his 50% share of variable expenses for their daughter's dance activities, but otherwise refused to find Benjamin in contempt. As to the second contempt motion, Darci claimed Benjamin deliberately made an untimely payment to her. Because it was undisputed the money had been paid, the circuit court denied the contempt motion.

¶14 Turning to the third contempt motion, Darci asserted that Benjamin “took some liberties” in his favor when closing out the couple’s “community account.” The circuit court ordered Benjamin to pay Darci \$3,375 reflecting unauthorized business expenses paid out of the community account, but did not find Benjamin in contempt. The fourth contempt motion alleged Benjamin refused to give Darci assets that were awarded to her in the divorce judgment. Benjamin conceded he owed Darci \$85,896, representing her share of an income tax refund. The circuit court acknowledged that during the divorce proceedings, the court gave Benjamin permission to deposit the tax refund check back into the business and determined the matter “would be subsequently addressed.” The circuit court, therefore, concluded Benjamin had not violated a court order with respect to the income tax refund. The court added that Benjamin would be selling his airplane, thereby enabling him to make the court-ordered tax refund payment, and set a deadline for that payment.

¶15 Although Darci appears to disagree with the circuit court’s decisions on these contempt motions, she fails to establish that the circuit court erroneously exercised its discretion when disposing of the motions. Therefore, we affirm the order on appeal.

¶16 Benjamin has filed a motion for costs and attorney fees pursuant to the frivolous appeal statute, WIS. STAT. RULE 809.25(3). This court has the

statutory power to sanction a party who pursues an appeal when one or both of the following occurs: (1) the appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another; or (2) the party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. WIS. STAT. RULE 809.25(3)(c).

¶17 Benjamin contends that because this court had determined we lacked jurisdiction to review the divorce judgment, Darci knew or should have known that her present arguments regarding the original divorce judgment were without any reasonable basis in law or equity. We are not persuaded. Although our earlier order indicated we would not consider issues arising from the divorce judgment, the circuit court improvidently commented in the order on appeal that “Darci is certainly free to appeal any issue she believes needs review.” This comment, together with the circuit court's statements acknowledging “mistakes in its original decision” and order amending the divorce judgment, could reasonably lead a pro se litigant, or perhaps any litigant, to believe the entire divorce judgment was available for appellate review. Therefore, the motion to declare this appeal frivolous and award fees and costs pursuant to WIS. STAT. RULE 809.25 is denied.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).

